IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES DISTRICT COUNCIL NO. 21 HEALTH AND WELFARE FUND 2980 Southampton-Byberry Road Philadelphia, PA 19154	:	CIVIL ACTION NO.
and	:	
INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES DISTRICT COUNCIL NO. 21 ANNUITY FUND 2980 Southampton-Byberry Road Philadelphia, PA 19154	:	
and	:	
INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES DISTRICT COUNCIL NO. 21 VACATION FUND 2980 Southampton-Byberry Road Philadelphia, PA 19154	:	
and	:	
INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES DISTRICT COUNCIL NO. 21 FINISHING TRADES OF THE MID-ATLANTIC REGION 2980 Southampton-Byberry Road Philadelphia, PA 19154	:	
and	:	
INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES DISTRICT COUNCIL NO. 21 SCHOLARSHIP FUND 2980 Southampton-Byberry Road Philadelphia, PA 19154	:	
and	:	

INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES DISTRICT COUNCIL NO. 21 JOB ORGANIZATION PROGRAM TRUST FUND **2980 Southampton-Byberry Road** **Philadelphia, PA 19154**	:
and	:
JOSEPH ASHDALE, TRUSTEE **International Union of Painters and Allied Trades District Council No. 21 Health and Welfare Fund** **2980 Southampton-Byberry Road** **Philadelphia, PA 19154**	:
and	:
INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES DISTRICT COUNCIL NO. 21 **2980 Southampton-Byberry Road** **Philadelphia, PA 19154**	:
and	:
INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES DISTRICT COUNCIL NO. 21 **2980 Southampton-Byberry Road** **Philadelphia, PA 19154**	:
Plaintiffs,	:
v.	:
ATSALIS BROTHERS PAINTING CO. **24595 Groesbeck Highway** **Warren, MI 48089**	:
And	:
c/o C T Corporation System **116 Pine Street – Suite 320** **Harrisburg, PA 17101**	:
Defendant.	:

COMPLAINT

The Parties

1. Plaintiffs International Union of Painters and Allied Trades District Council No. 21 Health and Welfare Fund, International Union of Painters and Allied Trades District Council No. 21 Annuity Fund, International Union of Painters and Allied Trades District Council No. 21 Job Recovery Fund, International Union of Painters and Allied Trades District Council No. 21 Apprentice Fund, International Union of Painters and Allied Trades District Council No. 21 Industry Advancement Fund, International Union of Painters and Allied Trades District Council No. 21 Vacation Fund, International Union of Painters and Allied Trades District Council No. 21 Scholarship Fund, International Union of Painters and Allied Trades District Council No. 21 Finishing Trades Institute of Mid-Atlantic Region and Vicinity, and International Union of Painters and Allied Trades District Council No. 21 Job Organization Program Trust Fund (collectively, "Plaintiff Funds") are employee benefit plans pursuant to Section 3(3) of the Employee Retirement Income Security Act (hereafter, "ERISA"), 29 U.S.C. Section 1002(3), with their principal office located 2980 Southampton-Byberry Road, Philadelphia, PA 19154, within this judicial district. Plaintiff Funds are due and owing relief sought from 3-R Painting Company, Inc., as set forth below.

2. Plaintiff Joseph Ashdale, a trustee of Plaintiff Health and Welfare Fund, acts as a fiduciary on behalf of Plaintiff Funds within the meaning of Section 3(21)(A) of ERISA, 29 U.S.C. §1002(21)(A), for the purposes of collecting delinquency contributions, and brings this action in such capacity on behalf of all Plaintiff Funds having been so authorized by the Trustees of each of the Plaintiff Funds.

3. Plaintiff International Union of Painters and Allied Trades District Council No. 21 (hereafter "Plaintiff Union") is an unincorporated labor organization within the meaning of

Section 3(5) of the Labor Management Relations Act of 1947 (hereafter the "LMRA"), as amended, 29 U.S.C. §185, with its principal office located at 2980 Southampton-Byberry Road, Philadelphia, PA 19154. Plaintiff Union brings this action in its capacity as collective bargaining agent for the covered employees of Defendant.

4. Defendant, Atsalis Brothers Painting Co. (hereafter "Defendant") is a Michigan corporation with its principal office located at 24595 Groesbeck Highway, Warren, MI 48089, and an agent for service of process at C T Corporation System, 116 Pine Street, Suite 320, Harrisburg, PA 17101.

5. Defendant is engaged in interstate commerce within the meaning of Section 2(6) of the LMRA, as amended, 29 U.S.C. §152(6), and has employed members of Plaintiff Union pursuant to a collective bargaining agreement(s) in the Commonwealth of Pennsylvania.

6. Defendant is an Employer within the meaning of Section 2(2) of the National Labor Relations Act and Section 301 of the LMRA, as amended, 29 U.S.C. §§152(2) and 185; and Section 515 of ERISA, 29 U.S.C. §§1002(5) and 1145.

Jurisdiction & Venue

7. Jurisdiction of the District Court is invoked pursuant to Section 301 of the LMRA, as amended, 29 U.S.C. §185, in that Defendant is an employer within the meaning of the LMRA, and party to a collective bargaining agreement(s) which forms the basis and substance of the matters at issue in this litigation; and 28 U.S.C. §1337, providing for original jurisdiction in civil actions that arise out of an Act of Congress regulating commerce.

8. Jurisdiction of the District Court is invoked pursuant to the provisions of Section 502 and Section 515 of ERISA, 29 U.S.C. §§1132 and 1145, in that Defendant is an employer as defined by ERISA. The Eastern District of Pennsylvania is the proper venue under ERISA

section 502(e)(2), 29 U.S.C. §1132(e)(2), because Plaintiff Funds, are administered in this judicial district.

Cause of Action - Delinquency Liability

9. Plaintiff Union and Defendant are parties to a collective bargaining agreement(s), which requires that Defendant make certain contributions on a timely basis to Plaintiff Funds and remit certain payments to Plaintiff Union.

10. Defendant, like all other contributing employers to Plaintiff Funds, is required to submit monthly reports accurately setting forth the hours worked by employees covered under the collective bargaining agreement(s), and to remit contributions to Plaintiff Funds, at rates commensurate with those required pursuant to the collective bargaining agreement(s), for all hours worked. The collective bargaining agreement(s) further note that liquidated damages and interest shall be assessed to untimely and/or unpaid fringe benefit contributions until the employer cures its delinquency. Notwithstanding obligations contained in said collective bargaining agreement(s), Defendant has failed to timely remit employees' required fringe benefit contributions.

11. Defendant has employed workers for whom it failed to timely remit the required benefit contributions for the periods of May 2014 through November 2016, thus resulting in an estimated obligation of approximately $13,071.70 for the liquidated damages and interest that has accrued to date due to Defendant's late remittances to the Plaintiff Funds of its benefit contribution obligations.

12. At the time of this Complaint, Plaintiff Funds have credited all benefit contribution remittances received from Defendant; however, amounts may change should Defendant make any payments, partial payments and/or fail to make payments due and owing to Plaintiff Funds as a result of additional or prior work performed under the collective

bargaining agreement(s).

13. Defendant has been notified of its delinquencies, but failed and/or refused to make appropriate and timely payments in full as required. Copies of Plaintiffs' Counsel Notices to Employer dated January 26, 2017 and February 73, 2017, respectively are attached hereto as Exhibit A.

15. Plaintiffs are entitled to a provision permitting immediate registration in another District of any judgment entered in this action.

WHEREFORE, Plaintiffs request this Court to grant judgment against Defendant and in favor of Plaintiffs, and to award relief as follows:

a. Judgment in the amount of $13,071.70, or such other amounts as may be due and owing when this cause of action reaches judgment;

b. An Order compelling Defendant to obtain a wage and payment bond, as provided by the applicable collective bargaining agreement(s);

c. Reasonable counsel fees, interest to run at rate of 5%, and costs of suit;

d. Liquidated damages on any principal owed at time of judgment, as provided by the applicable collective bargaining agreement(s) and by Section 502 of ERISA;

e. Injunctive relief ordering Defendant to remit employer reports, contributions and other required payments in a timely fashion; and

f. Other relief as the Court deems just and proper.

SPEAR WILDERMAN, P.C.

BY:____________________

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Dated: April 10, 2017